

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil No. 3:08-CV-427-MR-DCK**

KEVIN MICHAEL SMITH,)
)
Plaintiff,) **NOTICE**
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)
)

THIS MATTER is before the Court on the Defendant's Motion to Dismiss or in the Alternative for Summary Judgment (Document No. 7). The Plaintiff appears in this matter in a *pro se* status. In accordance with the decision of the United States Court of Appeals for the Fourth Circuit in *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the Plaintiff is cautioned that he carries a heavy burden in responding to a motion for summary judgment.

Rule 56(e) of the Federal Rules of Civil Procedure provides that:

When a motion for summary judgment is made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.
Fed.R.Civ.P. 56(e).

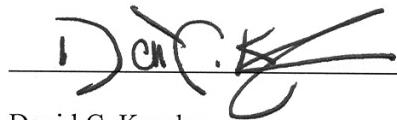
This language means that if the Plaintiff has any evidence to offer to show that there is a genuine issue for trial, he must now present it to the Court in a form which would otherwise be admissible at trial; that is, in the form of affidavits or unsworn declarations. An affidavit is a written statement made under oath; in other words, a statement prepared in writing and sworn before a notary public. An unsworn statement, made and signed under the penalty of perjury, may also be

submitted.

Affidavits or statements must be presented, if at all, by the Plaintiff to this Court within 15 days from the entry of this Order. As stated in Rule 56(e), the Plaintiff's failure to respond may result in the action being dismissed by way of summary judgment.

IT IS, THEREFORE, ORDERED that the Plaintiff may respond in accordance with Federal Rule of Civil Procedure 56(e) on or before 15 days from entry of this Notice.

Signed: March 3, 2009



David C. Keesler
United States Magistrate Judge
